HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

A.O. No. 1490 of 2001

Akbar Ali and another
Vs.
Motor Accident Claims Tribunal
Udham Singh Nagar & others

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 24.09.2004

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL.

A.O. No. 1490 of 2001

Akbar Ali another ...Applicant

Versus

Motor Accident Claims Tribunal
Udham Singh Nagar & others ....Respondent

Dated: 24.9.2004

Sri Dharam Veer, Sr. Advocate for the appellant
Sri D.S. Patni, Advocate for the respondents.

Hon'ble Rajesh Tandon J.

Heard the learned counsel for the parties.

Present appeal has been preferred against the judgment and award dated 20.9.2001, passed by the Motor Accident Claims Tribunal, Udham Singh Nagar.

Briefly stated the facts giving rise to the present appeal are that petitioner Akaber Ali and Smt. Sabra Begum have filed a claim petition for grant of compensation on account of death of their son Sri Baker Ali, who died in a motor vehicle accident on 1.12.2000 near village Baberpuri, District Udham Singh Nagar. The petitioner alleged that the deceased was riding motor cycle No. Up 22-5044 as pillion rider. The motor cycle

was being driven by Sri Kamar Ali. The petitioners have alleged that the accident had taken place due to rash and negligent driving of motor cycle due to which it collided with a bullock cart. Sri Baker Ali sustained grievous injuries in the accident. He was brought to Government Hospital Bajpur for where he was referred to Government Hospital, Kashipur. Further he was admitted in a private nursing home where he died on 12.12.2000. The petitioners has claimed a compensation of Rs.6,82,000/-. The Claim petition has been contested by opposite party no.2, the National Insurance Company.

On the pleadings of the parties the Claims Tribunal has framed as many as four issues.

The Claims Tribunal has held that from the evidence on record it is evident that no accident had taken place as alleged by the petitioner and actually the entire story of accident was concocted after the death of Baker Ali in order to get compensation from the Insurance Company and accordingly the Claims Tribunal has dismissed the claim petition.

Feeling aggrieved the appellants have field the present appeal.

I have heard the learned counsel for the parties and have perused the record.

A perusal of judgment and award passed by the Claims Tribunal shows that the learned Tribunal has placed much reliance on the report and statement of D.W.3 Chandra Pal Singh Tomar, who is surveyor of the Insurance Company. The petitioners have examined Kamar Ali as P.W.2, who was driving the motor cycle at the time of accident. He has categorically sated that the deceased Baker Ali had sustained injuries in motor cycle accident. Akabar Ali P.W.1 has also stated that his

son sustained injuries in the accident and he succumbed to the injuries. The petitioners have also filed documentary evidence in support of their assertion that the deceased had sustained injuries in motor cycle accident. The petitioners have filed medical certificate issued by the E.M.O. of PHC Bazpur. The medical certificate was prepared on the date of accident i.e. 1.12.2000 at 6.35 PM and the doctor has mentioned in the certificate that the injuries were sustained from the wheel of Bailgadi. In the Panchayatnama prepared on 12.12.2000, it has clearly been mentioned that the death of Qamer Ali was caused due to the injuries sustained on 1.12.2000 in motor cycle accident.

I find that the Claims Tribunal has evaluated the evidence of the petitioners with a wrong angle and has placed reliance on the hearsay statement of the surveyour of insurance company. A narrow and hypertechnical view in the motor accident claims case would not justify the beneficent object contained in the provision of the Act. The procedure under the Act is efficacious, speedy and enexpensive. Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle, the amount of compensation shall be payable under no fault scheme of Section 140 of the M.V.Act also.

The deceased had got treatment in various hospitals and the petitioners have field medical certificate issued by the doctors of various hospitals. The Tribunal can very well examine the doctors of the hospitals where the deceased had undergone treatment and also the persons who signed the Panchayatnama as Court witnesses to prove as to whether

accident by motor cycle, as stated by the petitioners, had taken place in which the deceased has sustained injuries.

The appeal is, therefore, allowed and the case is remanded to the Claims Tribunal to examine the witnesses of Panchayatnama as well as the doctors who medically examined the deceased and thereafter to decide the case afresh in accordance with law. No order as to costs.

(Rajesh Tandon J.)

24.9.2004
*Dhyani